

CABINET FOR GENERAL GOVERNMENT
Department of State
Office of Business Services
(Amendment)

30 KAR 3:010. Application for registration of trademarks and service marks.

RELATES TO: KRS 365.571, 365.573, 365.593

STATUTORY AUTHORITY: KRS 365.571(1), 365.573(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 365.571(1) requires the Secretary of State to promulgate an administrative regulation establishing application requirements for registration of trademarks and service marks. This administrative regulation establishes application requirements for registration of trademarks and service marks.

Section 1. Requirements for Application for Registration of a Trademark or Service Mark. (1) Application for registration of a trademark or service mark shall be made to the Secretary of State, pursuant to KRS 365.571(1), by submitting:

- (a) A completed "Trademark/Service Mark Application";
- (b) The registration fee required by KRS 365.571(6); and
- (c) The mark specimens required by KRS 365.571(5).

(2) The application shall not be accepted for filing until the requirements of subsection (1) of this section have been met.

(3) The application shall be in English.

Section 2. Application Which Includes Multiple Classes. An application may be filed which includes goods or services falling into multiple classes if:

- (1) The goods or services are specifically identified;
- (2) An application fee of ten (10) dollars for each classification is submitted; and
- (3) The application includes the dates of use and three (3) specimens for each class.

Section 3. Specimens. (1) An application for registration shall comply with KRS 365.571(5).

(2)(a) A trademark specimen shall be:

- 1. A label, tag or container bearing the trademark;
- 2. A point of sale display associated with the goods; or
- 3. If the nature of the goods or the nature of the mark makes the use of the mark on goods impractical, other documents related to the goods or the sale of the goods.

(b) A photocopy or photograph of a specimen identified in paragraph (a) of this subsection may be submitted.

(3) Service mark specimens shall show the mark as actually used in the sale or advertising of the services recited in the application.

(a) A service mark specimen shall be:

- 1. A newspaper or magazine advertisement, other form of advertisement, brochure or restaurant menu; or
- 2. Business documents such as letterhead, business cards or invoices, if the document shows the mark and refers to the relevant services.

(b) Printer's proofs for advertisements or words typed, printed or written on plain paper shall not be acceptable as specimens of the mark.

Section 4. Period of Response. (1) Within thirty (30) days of notice of the secretary's determination that an applicant is not entitled to registration, an applicant shall submit:

- (a) A reply to the secretary's determination; or
 - (b) An amended application conforming to the secretary's determination.
- (2) After review of an applicant's reply or amended application, the secretary shall:
- (a) Make a final determination on the application; or
 - (b) Permit the applicant to submit another amended application.

Section 5. Classifications. The system of classification of goods and services set out in 30 KAR 3:030 shall apply to trademark and service mark applications filed with the Secretary of State and to registrations issued on the basis of the applications. Renewals filed on registrations issued under a prior classification system shall be processed on the basis of the classification system in effect at the time the renewal application is filed.

Section 6. Incorporation by Reference. (1) The "Trademark/Service Mark Application (02/20[January 2003])" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Secretary of State's Office, 700 Capital Avenue, [State Capitol,] Suite 152, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m. or may be obtained at www.sos.ky.gov [<http://www.kysos.com>].

MICHAEL G. ADAMS, Secretary of State

APPROVED BY AGENCY: August 27, 2021

FILED WITH LRC: August 27, 2021 at 4:30 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2021, at 9:00 a.m. EST, at Office of the Secretary of State. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until November 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Michael R. Wilson, Director, Office of Business, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687, email michael.wilson@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michael R. Wilson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the process and form for applying for trademarks and service mark registration.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the process and form for applying for trademarks and service mark registration.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets out the material required by statute and by the discretion of the Secretary of State as authorized by KRS 365.571.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for approving trademark and service mark applications

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment incorporates an updated Trademark/Service Mark Application and replaces and outdated web-site address.

(b) The necessity of the amendment to this administrative regulation: The Office of the Secretary of State no longer uses the form listed in the current version of this administrative regulation and the existing regulation references a website that is no longer utilized.

(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by setting out the material required by statute and by the discretion of the Secretary of State as authorized by KRS 365.571.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides uniformity and certainty to the trademark and service mark application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment any person, business, organization or state and local government that holds or seeks to receive a trademark or service mark registration.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated individuals identified in question (3) will have to familiarize themselves with the contents of this regulation and incorporated form when applying for a trademark or service mark registration.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur negligible costs in order to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulation provides uniformity and certainty to the trademark and service mark application process.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There will be no costs to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Existing appropriations and fund sources for the Office of the Secretary of State.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: An increase in fees or funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to similarly situated individuals and entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will impact the units, parts or divisions of state or local government only if they seek to register a trademark or service mark.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation is authorized by KRS 365.571 and 365.573.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any additional revenue for state or local governments during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. No cost is anticipated beyond what has been historically allocated to administer the processing and approval of trademark and service mark applications.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: